



State of New Jersey
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 DIVISION OF CRIMINAL JUSTICE
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January 24, 1996

Detective Michael J. Razzano
 Piscataway Police Department
 Piscataway, New Jersey 08854

Re: Automatic Approval of Gun Applications

Dear Detective Razzano:

This is in response to your letter concerning provisions in the State's gun laws which provide that gun applications must be approved within a specified period of time or be deemed approved. These provisions should not be read literally. An application should not be prematurely approved before the police investigation is completed just to meet this apparent statutory deadline.

N.J.S.A. 2C:58-3 specifies the procedure that should be followed in determining whether an applicant is eligible for a permit to purchase a handgun or a firearms purchaser identification card for the purchase of rifles or shotguns. The statute further provides that the licensing authority shall conduct an investigation of the applicant and:

... unless good cause for the denial thereof appears, shall grant the permit or the identification card, or both, if application has been made therefor, within 30 days from the date of receipt of the application for residents of this State and within 45 days for nonresident applicants [N.J.S.A. 2C:58-3f].

N.J.S.A. 2C:58-4 specifies the procedure for obtaining a permit to carry a handgun in this State. Included in the statute is a provision that states:

If the application is not approved by the chief police officer or the superintendent within 60 days of filing, it shall be deemed to have been approved, unless the

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applicant agrees to an extension of time in writing
[N.J.S.A. 2C:58-4c].

These two statutory provisions in the State's gun control laws have not been interpreted by our courts. However, there are similar statutory provisions regarding other types of applications which can provide guidance as to how they should be interpreted. These provisions have been termed "automatic approval provisions" or "deemed-approved provisions." Our courts have stated that the

application of the statutory time constraints [respecting automatic approval] must be anchored in the reason for their existence. The evil which the automatic approval provisions were designed to remedy was municipal inaction and inattention. D'Anna v. Planning Bd. of Wash. Tp., 256 N.J.Super. 78, 82 (App. Div. 1992), (quoting Allied Realty, Ltd. v. Borough of Upper Saddle River, 221 N.J.Super. 407, 418 (App. Div. 1987), certif. denied, 110 N.J. 304 (1988).

"Our courts have repeatedly indicated that such automatic approval provisions 'should be applied with caution.'" Star Enterprise v. Wilder, 268 N.J.Super. 371, 374 (App. Div. 1993), (quoting King v. New Jersey Racing Comm'n, 103 N.J. 412 (1986). The legislative purpose

behind adoption of the automatic approval statutes "would be unjustifiably distorted in a manner patently subversive to the public interest if ... [such statutes] were to be applied in a mechanical fashion." [Allied Realty, Ltd., supra, at 82]

The statutory automatic approval provisions in the gun control laws were not designed to frustrate a police investigation into an applicant's background or to cause the law enforcement agency to conduct a perfunctory investigation in order to meet the apparent statutory deadline. Rather, these provisions undoubtedly were included to ensure that applications would be processed in a timely manner and not deliberately delayed by the agency.

Law enforcement agencies are statutorily charged with the responsibility of investigating a gun permit application to determine whether the application should be denied pursuant to the criteria in N.J.S.A. 2C:58-3c. The gun control laws place the burden of denial upon the agency. The applicant is not required to prove a basis for approval, except for the

provision regarding a permit to carry a firearm. The provisions for a permit to carry a handgun require that the applicant demonstrate that

he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun [N.J.S.A. 2C:58-4c].

* The fact that a gun permit investigation is not completed within the statutory time period does not mean that the application is automatically approved. This statutory provision just provides the applicant with a means of seeking judicial review of the matter.*For example, if the police investigation has been delayed because the department is awaiting a fingerprint check with the FBI, clearly the delay was not the fault of the agency. However, if an agency deliberately delayed the granting of a permit because the department has taken an informal position against the granting of permits, then the court should intercede in the matter.

*
These statutory provisions should not create problems with police investigations of gun applicants. Police departments should continue with their approved background investigation procedure, including the required fingerprint checks. Where approval by the department will not take place within the statutory time period through no fault of the department, the department should inform the applicant of this fact. The department should explain that it cannot recommend any action until the investigative process is completed and should attempt to obtain the person's waiver of the statutory time period so that the investigation process could continue. Requests for waivers or extensions of time to complete a matter is not uncommon with other governmental agencies that also have statutorily mandated time periods in which to act. For example, zoning boards and planning boards, also are under statutory time periods in which to act and may have to seek extensions to process applications. If the applicant refuses to grant an extension and files an appeal with the court, the department would be required to show that the delay was not caused by the agency but was inherent in the investigatory process.

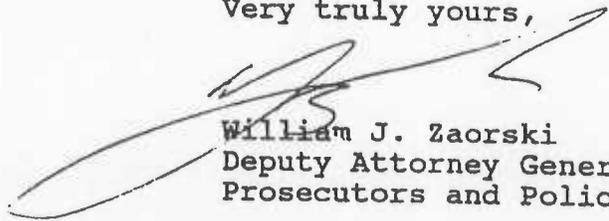
These "deemed-approved" statutes in the State's gun control laws apparently have not been the source of any significant problems within the State because this matter was not specifically addressed by the Committee to Review Gun Application Procedures in its proposed Gun Permit Manual. This committee had been appointed in 1991 by the State Supreme Court

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to review and evaluate the many and varied gun permit application procedures throughout the State and to recommend a uniformed procedure. My office has informed the committee of this matter so that it may determine whether future action may be required.

I hope that the above has clarified the scope of the automatic approval provisions in the gun control laws. If I can be of further assistance, please do not hesitate to call me. My telephone number is (609) 984-2796.

Very truly yours,



William J. Zaorski
Deputy Attorney General
Prosecutors and Police Bureau

cc:

AAG Debra L. Stone, Deputy Director
Operations
Capt. Carl Leisinger, supervisor
State Police Firearms Unit
Robert H. Corbin, First Assistant Prosecutor
Middlesex County Prosecutor's Office
DAG Greta Gooden-Brown, Chief
Prosecutors and Police Bureau

William Zaorski
Deputy Attorney General
Office of the Attorney General

Dear DAG Zaorski:

The Division of State Police has been requested to provide information at a meeting on January 7, 1999, held at Fort Monmouth by the Monmouth County Chiefs of Police Association. One question in particular, dealing with the issuance of permits to police officers, has been raised once again.

The statutory law appears to read with specific language as to which law enforcement authority is to issue permits and process applications for police officers. In researching this question I must bring you back to the origins and development of the current gun laws. Prior to the enactment of the 1966 gun laws, the Division of State Police, the Division of Criminal Justice and various Chiefs of Police met to formulate the authority of enforcing these new laws.

During a telephone conversation between DSFC Bruce Hull and retired Colonel Pagano, the Colonel advised DSFC Hull, that he, former Deputy Attorney General John W. Hayden Jr., and former Attorney General Arthur Sills, had at great length discussed this very question. In meetings with the various Chiefs of Police, it was decided that the Division of State Police would process all members of the Division, and that local law enforcement agencies would process members of their respective departments. This method would best suit the operational needs of the Division and the local departments.

Colonel Pagano provided the following scenario to support the proceeding decision. Any sizable State Police recruit class would pose an undue burden to the chiefs, if they had to investigate all of the recruits as firearm applicants. The Division of State Police had just processed these recruits through an extensive background investigation to qualify these recruits. It was decided that the police agency in which one was employed would better know the background and suitability of an applicant. As the Colonel noted, there is information in the Divisions files that no local agency would have access to, and likewise to the Division. Any Chief could request a copy of any executed permit or approved application from any of the issuing authorities, if the "home town chief" so desired a copy for his records. This request was never denied.

Colonel Pagano said that the intent of the Gun Control Act of 1966 was to qualify an applicant, and issue permits to those who could qualify. The law enforcement agencies who employ the applicant was in a better position to qualify this applicant, far better than the "hometown" authority.

On January 30, 1996, I spoke with former DAG John Hayden Jr., who was contacted at his office in the State of Washington. The conversation resulted in the concurrence with the information that was related by retired Colonel Clinton Pagano. Mr. Hayden supported the facts concerning the application backgrounds of law enforcement officers when applying for firearm permits would be more suited to be handled by the employer of that officer. Mr. Hayden also supported this position by relating the undue burden of many police departments having to investigate the State Police recruits would pose an unnecessary burden to each department, when in fact the State Police had already qualified these applicants upon acceptance to the State Police Academy.

This situation does indeed raise another question, but can be readily resolved. One could question, "Then who would be the issuing authority for a County employed law enforcement officer?"

Since the "county" is not an issuing authority, the county employee files with the authority in accordance to the provisions of the statutes. The investigating authorities need to adjust their background investigations to better accommodate the needs of the county employee. A revised edition of the State Police Firearms Applicant Investigation Guide contains such information to guide an agency through this process. The Division has already been processing law enforcement applicants through these procedures and has had success with this procedure. Adoption of these procedures by agencies throughout this State can reduce the investigation time factor burdened upon the local departments by "outside" law enforcement employee applicants.

To support this action by the law enforcement communities, a copy of a State Police Interoffice Communication, dated 9-15-77, from DSFC D.E. Morocco (F.I.U. Supervisor) to Major L.F. Umholtz (Supervisor Science and Criminalistic) was reviewed. The following paragraph stated:

"An opinion on the legality of the Superintendent of State Police to process applications for Permits to Carry a Pistol or Revolver for the investigators assigned to the Division of Criminal Justice was rendered on December 18, 1975. This opinion by DAG Gregory Schultz, stated in part, that the New Jersey State Police can properly process the applications of Criminal Justice investigators with respect to their obtaining a Permit to Carry a firearm. Prior to the rendering of the opinion, this matter was discussed with Judge Arthur Salvatore of Mercer County Court who at the time was the issuing authority for Permits to Carry in Mercer County. Judge Salvatore had indicated that he supported the opinion and that his court would process Division of Criminal Justice applications submitted to him by the State Police. "

This portion of this I.O.C. lends support to the information obtained by the Firearms Unit, that there was such an agreement established within the State concerning the processing of these particular applications by State employees. It was later determined that these investigators would complete a "police" training course, and be sworn with full police powers, thus, they eliminated the need for these investigators to obtain permits to carry handguns.

This action also supports the Divisions position that the State Police would process any applications submitted by its members, the municipalities would process any firearm applications submitted by their members. These administrative functions would more effectively carry out the intended purpose of the 1966 gun laws. That purpose was to investigate applicants who wished to exercise their constitutional rights in lawfully obtaining firearms. It would also assure the public that only qualified applicants could acquire firearms. Clearly, the law enforcement agencies in this State, would be the choice to investigate and issue permits for their employed law enforcement officers .



State of New Jersey

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Director

MEMORANDUM

TO: Detective Sergeant First Class Michael C. Aneskewich
Unit Head, Firearms Investigation Unit
New Jersey State Police

FROM: Steven J. Zweig *SJZ*
Deputy Attorney General

DATE: May 26, 2000

SUBJECT: Application of Armored Car Industry Reciprocity Act

You inquired as to the application of the Armored Car Industry Reciprocity Act, 15 U.S.C. § 5902, to the following scenario: armored car crew members who live and work in New Jersey are obtaining permits to carry weapons in neighboring States and then cite to the Armored Car Industry Reciprocity Act as the basis for their not obtaining permits in this State.

The Armored Car Industry Reciprocity Act allows armored car crew members to lawfully carry any weapon in any State while such member is acting in the service of that armored car company if, inter alia, the armored car member "has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State." 15 U.S.C. § 5902 (a) (1). Thus, the issue becomes whether these crew members are "primarily employed" in New Jersey. Assuming that these crew members are indeed "primarily employed" by the armored car companies in New Jersey, then they are required to obtain a gun carrying permit in New Jersey under N.J.S.A. 2C:58-4, notwithstanding the Armored Car Industry Reciprocity Act.

Before undertaking any enforcement actions against the employees of these armored car companies, however, you should provide the companies with notice of the above interpretation of the Armored Car Industry Reciprocity Act. You should also provide the companies and/or their crew member employees with the opportunity to demonstrate that said crew members are not "primarily employed" in New Jersey before taking any enforcement action. And, of course, before undertaking any enforcement action you should clear such action with the Division of Criminal Justice. For this you should contact Kimberly Guadagno, Deputy Director in charge of Prosecutions, at 984-0032.

cc: Anthony Cowell, DAG/ Deputy Director